STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

David Paul Kazmierski,

Petitioner,

vs. NO: 09WC 33851

Peoria Journal Star and Gatehouse Media,

14IWCC0231

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, medical expenses, causal connection, temporary total disability, permanent partial disability, attorneys' fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 28, 2012, is hereby affirmed and adopted.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 3 1 2014
o032514
CJD/jrc
049

Charles J. DeVriendt

Daniel R. Donohoo

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KAZMIERSKI, DAVID PAUL
Employee/Petitioner

Case# **09WC033851**

PEORIA JOURNAL STAR AND GATEHOUSE MEDIA
Employer/Respondent

14IWCC0231

On 11/28/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1009 KAVANAGH LAW FIRM
JAMES W SPRINGER
301 S W ADAMS ST SUITE 700
PEORIA, IL 61602

1337 KNELL & KELLY LLC
CHARLES D KNELL
504 FAYETTE ST
PEORIA, IL 61603

14IWCC0231

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DAVID PAUL KAZMIERSKI ,
Employee/Petitioner

v.

PEORIA JOURNAL STAR and GATEHOUSE MEDIA ,
Employer/Respondent

Case # 09 WC 33851

Consolidated cases: NONE.

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Peoria**, on **August 27, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other: _____

FINDINGS

On **August 23, 2007**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this alleged accident *was not* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the alleged accident.

In the year preceding the alleged injury, Petitioner earned **$57,366.92**; the average weekly wage was **$1,103.21**.

On the date of the alleged accident, Petitioner was **51** years of age, *single* with **one** dependent child.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $ **0.00** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and **$9,060.10** for other benefits, for a total credit of **$9,060.10**.

Respondent is entitled to a credit of $ **0.00** under Section 8(j) of the Act.

ORDER

Petitioner failed to prove that an accidental injury occurred that arose out of and in the course of his employment with Respondent on **August 23, 2007.**

Petitioner further failed to prove that he gave Respondent timely notice of this alleged injury as defined by the Act.

Petitioner further failed to prove that the conditions of ill-being complained of are causally related to any work activities performed on behalf of this Respondent.

All claims for compensation made by Petitioner in this matter are thus hereby denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator JOANN M. FRATIANNI

November 16, 2012
Date

NOV 28 2012

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Petitioner filed an Application for Adjustment of Claim in this case alleging an accident date of August 14, 2009. (Px23, Rx1) Petitioner claimed on the Request for Hearing form an accident date of August 23, 2009. (Arb.Ex.1)

Petitioner testified that he worked as a mailer trainee for Respondent and was hired in November of 1978. This work involved hand insertion of paper into machines, stacking bundles, and preparing newspapers to be mailed to customers. Two year later he was promoted to journeyman mailer. His responsibilities were the same and he would lift bundles of inserts that weighed 15-30 pounds. He worked in such a fashion for 29 years full time. In 2005 he was promoted to "man in charge." Petitioner testified his lifting involved no more than 20% of the total time he spent working each shift. When he was so promoted, Respondent had ergonomic aides for pallet lifts and used loaders rather than hand feeding product. He was still required to occasionally lift an empty skid placed on the floor. With ergonomic aides, there were pallet lifts and turntables to those lifts which would allow one to not bend and twist as much. These devices appeared in the 1990's.

Petitioner was asked on direct examination if he recalled the date of accident. He testified that he was not clear and he knew it was between August 23, 2007 and August 29, 2007. Petitioner then responded with an approximate date of August 24.

Petitioner testified that he saw his family physician, Dr. Lawless, as soon as he could and that was the basis for his estimation of the date of accident. Petitioner testified on the night of his alleged injury, he was not lifting bundles of newspapers, but was putting a heavy plastic pallet on top of a pile of similar pallets by himself, when he experienced a tremendous shooting pain down his left leg which he described as getting stabbed by an ice pick.

Petitioner at no time filled out an accident report for this alleged injury. He testified that he told Tim Burnside, the night manager, about the accident. Petitioner then testified that he called department head, John Phillips, the next day, and told him he had a back injury but did not reference it as work related at that time. He then notified the human resources manager, Julie O'Donnell, which he testified occurred at least two days after the alleged injury.

Petitioner saw Dr. Lawless on August 29, 2007. Petitioner testified he told Dr. Lawless he had an injury which took place on August 24, 2007 when he placed a plastic pallet on top of another pallet. The records of Dr. Lawless in evidence do not contain such a history but refer to low back pain radiating down the left leg for the past 10 days. (Rx15) Dr. Lawless then referred him to see Dr. Klopfenstein, a neurosurgeon.

Petitioner saw Dr. Klopfenstein on September 20, 2007. Petitioner admitted that he did not give a history of injury to the doctor of lifting pallets. Petitioner testified that he told the doctor it was a work-related accident. Petitioner filled out a Patient Information Sheet at the doctor's office in which he identified and admitted that he did not check off a box that would indicate a work related accident. That form indicates an accident or injury of August 1, 2007. (Rx9)

Dr. Klopfenstein prescribed surgery. Petitioner underwent surgery to his lower back with Dr. Klopfenstein and remained under his care post surgery, which included physical therapy. Dr. Klopfenstein released Petitioner to return to full duty work in January of 2008. At that time he returned to work as a journeyman mailer.

During his time off of work, Petitioner received short term disability benefits, which he did not claim was due to a work injury. Petitioner also denied being a weightlifter, which is contradicted by Dr. Lawless' office note dated March 26, 2002. On that date he saw Dr. Lawless for back spasms and indicated he was a weightlifter. Petitioner denied telling Dr. Lawless he was a weightlifter.

Petitioner also wrote a letter to Dr. Klopfenstein dated June 28, 2010 in which he asked him to write an opinion as to whether 32 years of lifting, twisting and bending was a cause of his back problems. Nowhere in that letter did Petitioner reference lifting a plastic pallet or stacking pallets. (Rx10)

Dr. Klopfenstein testified by evidence deposition in this matter and denied receiving a history of a specific work injury from Petitioner. Dr. Klopfenstein gave an opinion during his testimony in response to a hypothetical question assuming repetitive trauma to the lumbar spine and whether such work could cause or aggravate the condition he treated. (Px14)

Ms. Julie O'Donnell testified that she is the human resources manager for Respondent. Part of her responsibilities included processing workers' compensation claims brought any employee. Ms. O'Donnell testified that when so notified, a First Report of Injury form is filled out and signed by the employee and her. Ms. O'Donnell testified that at no time in August of 2007 was she made aware of any work related injury. All of Petitioner's medical bills were submitted and paid by group health insurance and he applied and received short term disability benefits. She first became aware of a work injury claim when she received the Application for Adjustment of Claim in July of 2009.

Respondent introduced into evidence a report of Dr. Soriano, an orthopedic surgeon, dated March 25, 2010. Dr. Soriano indicates in that report that he reviewed numerous medical records from Dr. Klopfenstein, Dr. Lawless and others and concluded there was no documented causal relationship between the herniation and any work related injury. (Rx6)

At no time did Petitioner amend the filed Application for Adjustment of Claim.

Based upon the above, the Arbitrator finds that Petitioner failed to prove that he sustained an accidental injury to his lumbar spine which arose out of and in the course of his employment by Respondent on August 24, 2007 or any other date alleged.

E. Was timely notice of the accident given to Respondent?

See findings of this Arbitrator in "C" above.

Based upon said findings, the Arbitrator further finds that Petitioner failed to give Respondent timely notice of an accidental injury as defined by the Act.

F. Is Petitioner's current condition of ill-being causally related to the injury?

See findings of this Arbitrator in "C" above.

Based upon said findings, the Arbitrator further finds that the condition of ill-being to the lumbar spine is not causally related to the claimed accidental injury in this matter.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

See findings of this Arbitrator in "C," "E," and "F" above.

Based upon said findings, all claims made by Petitioner for medical expenses in this matter are hereby denied.

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "C," "E," and "F" above.

Based upon said findings, all claims made by Petitioner for temporary total disability benefits in this matter are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "C," "E," and "F" above.

Based upon said findings, all claims made by Petitioner for permanent partial disability benefits in this matter are hereby denied.

M. Should penalties or fees be imposed upon Respondent?

See findings of this Arbitrator in "C," "E," and "F" above.

Based upon said findings, all claims made by Petitioner for penalties and fees in this matter are hereby denied.

N. Is Respondent due any credit?

See findings of this Arbitrator in "C," "E," and "F" above.

Based upon said findings, all claims made by Petitioner for credit are hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Matthew Flowers,
Petitioner,

vs.

NO: 10WC 25400

State of Illinois/Pinckneyville Correctional Center,
Respondent,

14IWCC0232

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, notice, temporary total disability, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 25, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: MAR 3 1 2014
o032614
CJD/jrc
049

Charles J. DeVriendt

Daniel R. Donohoo

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FLOWERS, MATTHEW
Employee/Petitioner

Case# **10WC025400**

SOI/PINCKNEYVILLE CORRECTIONAL CENTER
Employer/Respondent

14IWCC0232

On 1/25/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1580 BECKER SCHROADER & CHAPMAN PC
TODD J SCHROADER
3673 HWY 111 PO BOX 488
GRANITE CITY, IL 62040

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794

ASSISTANT ATTORNEY GENERAL
MOLLY WILSON DEARING
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601

1350 DEPARTMENT OF CORRECTIONS
WORKERS' COMPENSATION CLAIMS
1301 CONCORDIA COURT
PO BOX 19277
SPRINGFIELD, IL 62794

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

JAN 25 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0232

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Matthew Flowers
Employee/Petitioner

v.

State of Illinois/Pinckneyville Correctional Center
Employer/Respondent

Case # 10 WC 25400

Consolidated cases: n/a

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on December 11, 2012. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On June 4, 2010, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $55,765.00; the average weekly wage was $1,072.40.

On the date of accident, Petitioner was 39 years of age, married with 3 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00. The parties stipulated at trial that TTD benefits have been paid in full.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 8 as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability of $643.44 per week for 116.9 weeks because the injuries sustained caused the 15% loss of use of the right arm, 15% loss of use of the left arm, 10% loss of use of the right hand and 10% loss of use of the left hand as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

William R. Gallagher, Arbitrator

January 18, 2013
Date

JAN 25 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Application alleged a date of accident (manifestation) of June 4, 2010, and further stated that as a result of repetitive trauma, Petitioner sustained injuries to the right and left hands and right and left arms. Respondent disputed liability on the basis of accident, notice and causal relationship. At trial Petitioner sought an order for payment of medical bills and permanent partial disability. The parties stipulated that all temporary total disability benefits had been paid in full.

Petitioner testified he worked for Respondent as a Correctional Officer for 18 1/2 years and that he initially worked at Big Muddy Correctional Center from June, 1994, until he was transferred to Pinckneyville Correctional Center in January, 1999. Petitioner worked numerous job assignments at Pinckneyville Correctional Center since that time. Included in those assignments Petitioner performed while working at Pinckneyville was an assignment to work in the R5 segregation unit. This segregation unit does require a higher level of security for the inmates than those inmates that are in the general prison population.

Petitioner testified that approximately one year prior to June 4, 2010, he worked in the R5 segregation unit. One of the duties Petitioner described was opening a chuckhole to hand the inmates their laundry bag. The chuckhole is a rectangular shaped opening on the door to the cell and it is opened utilizing a Folger-Adams key that is approximately 4 to 6 inches in length. Petitioner testified that he was required to insert the key forcefully and turn it with a ratcheting twisting motion and, at the same time, pull on the chuckhole to open it. Petitioner testified that turning the key was difficult because on many occasions the lock would stick. When it was necessary to remove inmates from the cell, the chuckhole had to be opened again, the inmate would place his hands inside the chuckhole so Petitioner could cuff him and then the chuckhole had to be closed. Another key was then used to open the cell door and those keys are approximately three inches in length.

Petitioner testified he would obtain laundry approximately 30 to 50 times a day and then return the laundry in that same quantity. Petitioner reviewed Respondent's Exhibit 11, the Key Estimation Study, and he disagreed with the count stating that it was not broad enough to cover everything that he does as a Correctional Officer. Petitioner testified that on a busy day there would be 300 to 350 key turns and the constant turning of keys is required to go anywhere in the facility. On a very slow day, Petitioner agreed that the counts could be lower than those estimated in Respondent's Exhibit 11. Petitioner testified during this time period he worked approximately 60 shifts, 16 hour each, and, during those double shifts he could turn keys up to 800 times. In a slow double shift, Petitioner could have turned approximately 300 to 400 keys.

The Petitioner would have to use the same opening and closing of the chuckhole and cuffing of inmates when inmates would have to go to the infirmary or when they would use the shower. Opening and closing of the chuckhole was also performed by the Petitioner when he was required to feed the inmates. This would require opening and closing 30 chuckholes to deliver the tray of food and then the same procedure when he retrieved the trays. Petitioner began to experience symptoms of pain in both of his hands in either 2008 or 2009 and he did obtain some

wrist splints in 2009; however, he did not seek any medical care or treatment at that time. Petitioner reported this repetitive trauma injury to Major Pickering on June 14, 2010, as is evidenced in Respondent's Exhibits 2 and 3.

Respondent called Lieutenant Jason M. Thompson to testify on its behalf and he was present during Petitioner's testimony when Petitioner stated that he turned keys between 300 to 350 times per shift. Lieutenant Thompson stated that turning 300 to 350 key turns per shift was possible but it was probably not common. Lieutenant Thompson did concede that it was possible that a Correctional Officer could have been many key turns per shift because there are times that an officer gets busy. Lieutenant Thompson also stated that his count was not exact as he did not have time to run with a counter with every Correctional Officer. He also agreed that on any given day, the key turn count may be higher.

Petitioner sought medical treatment for the first time on May 25, 2010, when he was seen by Dr. J. Gregg Fozard, his family physician. Petitioner complained of bilateral numbness and pain in his hands with occasional involvement of the elbows. Dr. Fozard ordered nerve conduction studies which were performed on June 4, 2010, by Dr. Fakhri Alan. The impression was moderately severe bilateral cubital tunnel syndrome and mild bilateral carpal tunnel syndrome. This is the date of manifestation alleged in the Claim for Compensation. As noted herein, Petitioner gave notice to Respondent on June 14, 2010, and a First Report of Injury was prepared.

Petitioner was seen by Dr. David Brown on July 12, 2010. In connection with that examination, Petitioner completed a patient questionnaire in which he described his job duties which included the use of Folger-Adams keys on locks that were stiff and difficult to operate. In this questionnaire, Petitioner erroneously stated that he turned keys 400 to 500 times per hour and this should have actually indicated per shift. (Dr. Brown also stated that he interpreted this to be a per shift estimation as well.) Dr. Brown examined Petitioner and opined that he had severe bilateral cubital tunnel syndrome and chronic bilateral carpal tunnel syndrome. Dr. Brown recommended surgery and noted Petitioner's job duties and the lack of any other medical problems that would put him at risk. Dr. Brown stated that Petitioner's work as a Correctional Officer was an aggravating or contributing factor in the development of both conditions.

Dr. Brown performed surgery on Petitioner's right elbow and wrist on August 27, 2010, the procedure consisting of a cubital tunnel release and ulnar transposition with lengthening of the flexor pronator tendon. At the same time, Dr. Brown performed a carpal tunnel release. Dr. Brown performed the identical surgical procedures on the left elbow and wrist on September 17, 2010. Post-surgically, Petitioner received physical therapy at Pinckneyville Community Hospital from August 30, 2010, through November 3, 2010. Dr. Brown released Petitioner to return to work without restrictions on November 15, 2010.

Dr. Brown was deposed on March 27, 2012, and his deposition testimony was received into evidence. Dr. Brown's testimony in regard to the diagnosis and treatment of Petitioner was consistent with the information contained in his medical records. In respect to the issue of causality, Dr. Brown reviewed two job site analysis reports prepared by CorVel dated December 17, 2010, and February 2, 2011; two DVD's also prepared by CorVel showing various job duties

of a Correctional Officer; and a report prepared by Dr. James Williams who performed a records review at the request of Respondent. When he was deposed, a lengthy hypothetical question was posed which summarized Petitioner's job duties and Dr. Brown opined that there was a causal relationship between Petitioner's job activities and the conditions that he diagnosed and treated. Dr. Brown opined that the work activity was an aggravating factor even assuming the accuracy of job site analysis and Key Estimation Studies and whether or not the hypothetical question posed was completely accurate.

At the request of Respondent, Dr. James Williams reviewed various medical treatment records, Respondent's reports regarding Petitioner's condition and the same job site analysis and DVD's that were also reviewed by Dr. Brown. Dr. Williams also personally visited Respondent's facility in Pinckneyville; however, he did not personally examine the Petitioner. Dr. Williams opined that there was not a causal relationship between Petitioner's work activities and the conditions in his upper extremities and that Petitioner's activities of fishing, gardening and hunting could be causative factors in the development of the conditions. He did not identify any systemic medical causative factors of the condition.

Petitioner testified that the surgeries were helpful. Petitioner was able to successfully return to work as a Correctional Officer.

Conclusions of Law

In regard to disputed issue (E) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner did give notice to Respondent within the time limit prescribed under the Act.

In support of this conclusion the Arbitrator notes the following:

In a repetitive trauma case, the date of accident is the date of manifestation which has been defined as the fact of an injury and the causal relationship of it to a work activity would be apparent to a reasonable person. Peoria County Belwood Nursing Home v. Industrial Commission, 505 N.E.2d 1026 (Ill. 1987). While Petitioner had symptoms and self administered splints in 2009, no medical treatment was sought by him at that time and there was no diagnosis until the nerve conduction studies were performed on June 4, 2010. The Arbitrator thereby concludes that the date of manifestation is June 4, 2010. Petitioner gave notice to Respondent on June 14, 2010, which is within the statutory time limit.

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner sustained a repetitive trauma injury to both upper extremities arising out of and in the course of his employment for Respondent.

In support of this conclusion the Arbitrator notes the following:

The Arbitrator finds Petitioner was a credible witness on his own behalf and testified as to the repetitive use of his upper extremities, in particular, the frequent key turns.

Respondent's witness, Lieutenant Thompson, disagreed with Petitioner's testimony as to the frequency of key turns but conceded that the amount of key turning Petitioner testified to was possible if the Correctional Officers were busy.

Dr. Brown's opinion as to causal relationship is more credible than that of Dr. Williams. Dr. Brown reviewed all of the data including the Key Estimation Studies and DVD's prepared at Respondent's direction and concluded even if information was accurate and the hypothetical was not completely accurate, there still was a causal relationship between the work activities and the conditions for which he diagnosed and provided treatment. Further, there was no systemic medical reason for Petitioner developing these conditions and the Arbitrator is not persuaded that his outside activities of fishing, gardening and hunting are the cause of the his conditions.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator finds that all the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills associated therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 8 as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that as a result of repetitive trauma injuries of June 4, 2010, Petitioner has sustained permanent partial disability to the extent of 15% loss of use of the right arm, 15% loss of use of the left arm, 10% loss of use of the right hand and 10% loss of use of the left hand.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☒ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Chris Murphy,
Petitioner,

vs.

Chris Henry, Injured Workers Benefits Fund
Illinois State Treasurer, and Jeremy Wilson,
Respondent.

14IWCC0233

NO: 11 WC 16333

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, permanent partial disability, wages, medical expenses, employer employee relationship and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 25, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: MAR 3 1 2014
KWL/vf
O-1/28/14
42

Kevin W. Lamborn

Daniel R. Donohoo

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0233

MURPHY, CHRIS M
Employee/Petitioner

Case# 11WC016333

CHRIS HENRY,INJURED WORKERS BENEFIT FUND ILLINOIS STATE TRESURER & JEREMY WILSON
Employer/Respondent

On 6/25/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0080 PRUSAK WINNE & McKINLEY LTD
JOSEPH E WINNE
403 N E JEFFERSON ST
PEORIA, IL 61603

2187 HEIPLE LAW OFFICE
JEREMY HEIPLE
7620 N UNIVERSITY SUITE 203
PEORIA, IL 61614

5116 ASSISTANT ATTORNEY GENERAL
GABRIEL CASEY
500 S SECOND ST
SPRINGFIELD, IL 62706

PINNACLE LAW OFFICE
NICK OWENS
401 MAIN ST SUITE 105
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0233

CHRIS M. MURPHY,
Employee/Petitioner

v.

CHRIS HENRY, INJURED WORKERS BENEFIT FUND, ILLINOIS STATE TREASURER, and JEREMY WILSON,
Employer/Respondent

Case # 11 WC 16333

Consolidated cases: NONE.

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Peoria**, on **November 27, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Were Respondents operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☒ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondents?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondents?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Have Respondents paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondents?
N. ☐ Are Respondents due any credit?
O. ☒ Other: Motion to Dismiss Application for Adjustment of Claim.

FINDINGS

On **April 2, 2011**, Respondents *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did not* exist between Petitioner and Respondents.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this alleged accident *was* given to Respondents.

Petitioner's current condition of ill-being *is not* causally related to the alleged accident.

In the year preceding the alleged injury, Petitioner earned $ **0.00**; the average weekly wage was $ **0.00**.

On the date of the alleged accident, Petitioner was **28** years of age, *single* with **one** dependent child under 18.

Petitioner *has* received all reasonable and necessary medical services.

Respondents *have not* paid all appropriate charges for all reasonable and necessary medical services.

Respondents shall be given a credit of $ **0.00** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and $ **0.00** for other benefits, for a total credit of $ **0.00**.

Respondents are entitled to a credit of $ **0.00** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that Petitioner failed to prove that an employee and employer relationship existed between himself and the Respondents Chris Henry and Jeremy Wilson on April 2, 2011.

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. **No award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of this Act. No award is hereby entered against any Respondent, and no benefits are due Petitioner in this case.** Normally, if a Respondent employer fails to pay any awarded benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act. **As no such benefits are awarded, there is no such right of recovery by the fund. As there are no benefits awarded, the Respondent/Employer/Owner/Officer need not reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.** The parties have stipulated that the Fund has paid no compensation to Petitioner in this case.

All claims for compensation in this matter as made by Petitioner are thus hereby denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator JOANN M. FRATIANNI

June 21, 2013
Date

JUN 25 2013

B. Was there an employee-employer relationship?

Petitioner testified he received a contact by a friend concerning a roofing job. The name of the friend was Mr. Justin Heft. Mr. Heft informed him that Chris Henry had a roofing job. Mr. Heft further informed Petitioner he had found another job that was just starting, and that he could not work on Henry's roofing project. Mr. Heft informed Petitioner that he could take his spot with that job.

Petitioner testified that he then called Mr. Henry prior to April 2, 2011. Mr. Henry told him to meet him at 6920 Rockvale Drive, Peoria, on the morning of April 2, 2011. Petitioner testified that he arrived at the work site that morning approximately two hours ahead of time in order to meet with Mr. Henry. Petitioner testified that Mr. Henry hired him to work on the roof of the residence at that location, which was owned by Mr. Jeremy Wilson. Petitioner testified that it was agreed between Mr. Henry and himself that he would be paid $10.00 an hour for his time worked. Petitioner testified that it was his belief based on that conversation he was hired by Mr. Henry not only for that job, and for future employment on a full-time basis. Petitioner testified that Mr. Henry told him about his roofing business that he had for over nine years.

Petitioner testified that at the end of the fifth hour of work, and while he was carrying tarpaper off the roof and onto a ladder, he slipped and fell backwards onto his back and left arm, injuring his left arm.

Petitioner testified the tools and equipment used on that date were owned by Mr. Henry. Petitioner further testified that he believed he received his direction and control from the job by Mr. Henry and it was his impression that Mr. Henry had the right to hire and/or fire him from that job. Petitioner testified that the homeowner, Mr. Jeremy Wilson, was on the roof on April 2, 2011 periodically, but gave no orders or directions to workers.

Mr. Chris Henry testified that he was employed installing drywall for Trueblood Drywall. He was also employed as a part time security guard at Grande Prairie Mall in Peoria. Mr. Henry testified that he was friends with Respondent Jeremy Wilson for the year prior to April 2, 2011. Mr. Henry testified that he offered to help Mr. Wilson replace his roof for $10.00 each hour cash for each hour worked. In addition, Mr. Henry offered to round up more individuals to work on the roof when Mr. Wilson's other helpers, Mr. Wilson's father and brother, were unable to help as planned. Mr. Henry testified that he informed Mr. Wilson that he knew some guys who may be interested in helping and that they would accept $10.00 cash per hour in exchange. Mr. Henry testified he had never worked on a roof for pay before this project and has not since. Mr. Henry further testified he had not worked with any of the individuals before April 2, 2011, or after that date.

Mr. Henry testified that he arranged for Mr. Aharon Bouchez, Mr. Matt Knutt, Mr. Justin Heft, and a later date, Mr. Spencer Flier, to work on that particular roofing project. Mr. Henry testified that he informed all of them that the homeowner would pay $10.00 cash per hour to each. Mr. Henry testified that he did not speak to Petitioner prior to meeting him on April 2, 2011 at the work site. Mr. Henry testified that he had been at work at Grande Prairie Mall that morning and did not arrive at the job site until approximately 1:30 p.m. Mr. Henry testified that he then met Petitioner, who was there to work in Mr. Heft's place, as Mr. Heft had found other gainful employment.

Mr. Henry testified that on April 2, 2011, that he, Mr. Wilson, Petitioner, Mr. Bouchez, Mr. Knutt, and Mr. Shawn McIntyre, a friend of the homeowner, were all working on the roof. Mr. Henry testified that everyone was simply tearing off old shingles and moving material off the roof so the new shingles could be moved into place and installed. Mr. Henry testified that everyone was performing this work and no real instruction was sought or given to any individual on April 2, 2011. Mr. Henry testified that at some point on one of the days, it was discovered somehow that Mr. Bouchez had the most experience laying tarpaper, so he performed that task and would be paid an extra $100.00 for that skill. No testimony was elicited as to how that decision to make that extra payment was made, who instructed Mr. Bouchez to perform that task or if he merely volunteered.

Mr. Henry testified he provided a hammer, tape measure, nail gun, pry bar and a ladder to use on the project. Mr. Henry testified he shared these tools with other individuals at the site and transported them in his personal truck. Mr. Henry testified that Mr. Bouchez also brought a nail gun that was used on the project, and the property owner, Mr. Wilson, provided a ladder that was used on the backside of the house. Mr. Henry testified that at the end of the last day, Mr. Wilson gave him a check for $1,300.00 to split between himself and the other workers at the rate of $10.00 per hour. No testimony was elicited as to who decided how much this check would be for.

Mr. Henry testified that they all wanted cash payment upon completion of the work the final day, and agreed to all go to the bank to split the check as the homeowner Wilson did not have the cash available. Mr. Henry testified he cashed the check at the bank and gave payment to each person who worked the last day. Mr. Henry recalled giving Petitioner's payment to Mr. Heft to pass along as he was not present. Mr. Knutt testified that he only worked on the first day of the project, so Mr. Henry kept his payment and contacted him later to pass it along.

Mr. Henry testified concerning his involvement in the purchase of materials for this project from ABC Supply. Mr. Henry testified that Mr. Wilson asked him to use his account at ABC because one needed an account to purchase anything from the shop. Mr. Henry testified that in order to get an account, one had to pass a credit check, and Mr. Henry was not wiling to go through that. Mr. Wilson had given him a check to pay for the materials at ABC, but there was a problem with the check, so Mr. Wilson ended up going and paying for the materials in person. The invoice reflects that Mr. Wilson paid for the materials and the account used was Mr. Henry's. (Px8) Mr. Henry testified he was paid about $400.00 for the week out of the $1,300.00 check issued, that that he worked about 39 hours total on the roof.

Mr. Jeremy Wilson testified that he was the homeowner at the site. Mr. Wilson testified that Mr. Henry provided him with a bid or this roofing job in an amount of $5,000.00, including time and materials. At the conclusion of the job, Mr. Wilson wrote Mr. Henry a check for $1,300.00, which represented the amount of time all of the workers spent on the job site, and for which they were compensated at $10.00 an hour. Mr. Wilson further testified that he did not give direction and control to workers, and that was the responsibility of Mr. Henry. Mr. Wilson testified that he was on the roof periodically working as the others were, helping out however he could. Mr. Wilson testified that at no time did he give any orders to the workers as to how the work was to be performed. Mr. Wilson did admit to paying for the materials that were used on the roof, paying for a dumpster from Kevs' Kans and providing a ladder. Mr. Wilson testified all remaining tools and equipment were provided by Mr. Henry. Mr. Wilson testified that his occupation is that of an engineer and he is employed by Caterpillar, Inc. in Peoria.

Mr. Matthew Knutt testified that Mr. Henry told him Mr. Jeremy Wilson needed a roof completed and would pay the roofers $10.00 per hour. Mr. Knutt testified he worked on the roof putting down sheet paper and nailing down exposed nails. Mr. Knutt testified that while he worked on the roof, on occasion he would ask Mr. Henry what to do because he knew Mr. Henry. Mr. Knutt testified that another guy, who was not Mr. Wilson nor Mr. Henry, asked him to help tighten tar paper at one point and he did so. Mr. Knutt testified that he only worked one day for 8-12 hours, did not keep track of his time, did not report his time to anyone, and was paid an amount he could remember at a later time because he only worked on the day of the accident. Mr. Knutt testified he felt he was paid fairly for the work he performed at the time.

Mr. Spencer Flier testified that one to two weeks prior to Apri 2, 2011, Mr. Flier and Mr. Henry went to the homeowner's residence, and talked to Mr. Wilson. At that time they measured the roof and Mr. Henry informed Mr. Wilson the whole project would cost around $5,000.00. Mr. Flier testified he was not trying to listen to their conversation because it was their business and not his, but he overheard Mr. Henry telling Mr. Wilson that people would work on the roof for $10.00 an hour and that was acceptable to Mr. Wilson.

Mr. Flier further testified that Mr. Henry called him one day after this accident, and said there were less people working on the roof and that it would take longer and go quicker if Mr. Flier came and helped. Mr. Flier testified that Mr. Henry didn't really care if he helped at that point but it would be nice since it wouldn't take them as long to complete the roof. Mr. Flier testified there were two nail guns being used for the roofing job and one was owned by Mr. Henry. Mr. Flier testified that he was paid cash for his time worked.

Mr. Flier testified that everyone was just using common sense to decide what to work on while they were on the roof, that no one was giving real instruction on what to do, but that he felt both Mr. Wilson, as the homeowner, and Mr. Henry, as the one who contacted him to help, could tell him to get off the roof. Mr. Flier testified he brought a hammer and pry bar that he used when he helped work on the roof. Mr. Flier testified keeping track of the hours he worked himself, maybe in a little notebook, and he informed someone prior to getting paid how many hours he worked, but he only recalls working between 15-20, or 25 hours, and that he was paid between $150.00 and $200.00. Mr. Flier testified that Mr. Wilson was on the roof "doing basic stuff."

In order to determine whether or not an employer and employee relationship existed between the parties, an Arbitrator must look at the factors of agency to determine whether an individual is an independent contractor or not. "Right to control the manner in which the work was done, the method of payment, the right to discharge, the skill required in the work to be done, and the furnishing of tools, materials or equipment . . . of these factors, the right to control the work is perhaps the most important single factor." *Coontz v. Industrial Commission,* 19 Ill. 2d 574, 169 N.E. 2d 94, 96 (1960).

Concerning the right to control, the Arbitrator finds there was little or no control by either Respondent. There was no testimony elicited of a direction of tasks, a divvying of work, or instruction on how to perform a specific task. There was testimony that each person used common sense to know what to do, asked what they could do if they did not know themselves and that one worker was at one time asked by another, who was not one of the Respondents, to assist with some tar paper. Mr. Henry testified that there was no real instruction tearing off shingles. Mr. Knutt testified no one instructed him. Mr. Flier testified there was no instruction and everyone used common sense. While Mr. Knutt testified to asking Mr. Henry what he could do at one point during the job, he also testified that this was because Mr. Henry had told him about the roofing project and that the was the only one that Mr. Knutt knew well.

Concerning the method of payment, the Arbitrator finds that while Mr. Wilson issued the check to pay for the labor, Mr. Henry, at a minimum, assisted in distributing those funds. There was no evidence presented as to how Mr. Wilson knew to make the check out for $1,300.00 for labor, as opposed to some other amount. Each Respondent testified that the other determined how much time each worker would get paid. The non-party workers were unable to recall whether they reported their time to either Respondent or how the time was tracked.

Concerning the right to discharge, the Arbitrator notes that each worker seemed quite independent. No testimony was elicited that the roofers were told what time to show up or when they could leave, or even which days they were to work. It seems pretty clear from the testimony before this Arbitrator that each person was free to work whatever days they wished or wanted, or even to substitute themselves with another worker without some type of approval, as was the case with Mr. Heft and Petitioner. Mr. Flier testified that he felt like since it was Mr. Wilson's home and since he was informed of the work by Mr. Henry, that either one of them could tell him to get off the roof.

Concerning the skill required to perform the work, the Arbitrator finds very little skill was required. Each worker chose to help at whatever skill level they possessed. The only roofer who appeared to have skill above average was Mr. Bouchez, who laid the tarpaper. It appears from the testimony that this was decided at the time the tarpaper needed to be laid and that Mr. Bouchez may or may not have volunteered for this task. There is no testimony that Mr. Bouchez was instructed to lay the tarpaper.

Concerning the furnishing of tools, materials and equipment, the Arbitrator finds the homeowner, Respondent Wilson, provided the materials and that many of the workers brought tools. There was testimony and exhibits that establishes that Mr. Wilson paid for the roofing shingles and materials along with a dumpster. There is also testimony that tools were furnished or brought by Mr. Wilson in the form of a ladder, by Mr. Bouchez, in the form of a nail gun, by Mr. Henry, in the form of a nail gun, pry bar, taper measure, hammer and ladder, and by Mr. Flier, in the form of a hammer and pry bar. There is no testimony that anyone instructed anyone as to what tools to bring. There was testimony that a nail gun broke during the roofing project, but no testimony that anyone was to go and get a replacement.

Based upon the above, the Arbitrator finds the testimony of all the witnesses to be more credible than that of Petitioner in this case. The Proctor Hospital emergency room records reflect that Petitioner drank 4-5 alcoholic beverages a day and had admitted to using marijuana as recently as two weeks before April 2, 2011. In spite of this, there is no evidence presented that alcohol or marijuana was a cause of the injury. In addition, Petitioner told the staff at Proctor Hospital that he owned his own construction company, which contradicts his testimony that he worked for Mr. Henry. The Arbitrator also notes that Petitioner's testimony that Mr. Henry informed him that he had owned a roofing business for the past nine years is not corroborated by other testimony by other witnesses, but it similar to the testimony of Mr. Henry that he has worked or has been a co-owner in a drywall business for nine years.

Based upon the above, and applying all of the factors noted above, the Arbitrator concludes and finds that Petitioner failed to prove that an employer and employee relationship existed between himself and the two named Respondents on April 2, 2011.

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondents?

See findings of this Arbitrator in "B" above.

Based upon said findings, the Arbitrator further finds that Petitioner failed to prove that he sustained an accidental injury that arose out of and in the course of his alleged employment by Respondents on April 2, 2011.

F. Is Petitioner's current condition of ill-being causally related to the injury?

See findings of this Arbitrator in "B" above.

Based upon said findings, the Arbitrator further finds that Petitioner failed to prove that his current condition of ill-being is causally related to an accidental injury that arose out of and in the course of his alleged employment by Respondents on April 2, 2011.

G. What were Petitioner's earnings?

See findings of this Arbitrator in "B" above.

Based upon said findings, the Arbitrator further finds that Petitioner failed to prove that he earned any salary for the year preceding April 2, 2011 through his alleged employment by Respondents.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical expenses?

See findings of this Arbitrator in "B" above.

Based upon said findings, the Arbitrator further finds that all claims made by Petitioner for medical expenses incurred from an alleged work injury on April 2, 2011 are hereby denied.

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "B" above.

Based upon said findings, the Arbitrator further finds that all claims made by Petitioner for temporary total disability benefits incurred from an alleged work injury on April 2, 2011 are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "B" above.

Based upon said findings, the Arbitrator further finds that all claims made by Petitioner for permanent partial disability benefits incurred from an alleged work injury on April 2, 2011 are hereby denied.

O. Motion to Dismiss Application for Adjustment of Claim?

See findings of this Arbitrator in "B" above.

Based upon the above, the Motion to Dismiss the Application for Adjustment of Claim is denied, as the matter has been adjudicated that on April 2, 2011, no employer and employee relationship existed between the parties.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
MADISON

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AARON A. BROOKINS,

Petitioner,

vs.

NO: 09 WC 31240

14IWCC0234

AMERICAN STEEL,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of evidentiary findings, temporary total disability benefits and the nature and extent of the injury, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator found that Petitioner was permanently and totally disabled. We reverse the Arbitrator and find that Petitioner is not permanently and totally disabled. Instead, we award Petitioner 45% loss of the person as a whole.

We hold that Petitioner has not met his burden of proof to show that he is permanently and totally disabled. An employee can establish that he is entitled to permanent total disability benefits in one of three ways: "by a preponderance of medical evidence; by showing a diligent but unsuccessful job search; or by demonstrating that, because of age, training, education, experience, and condition, there are no available jobs for a person in his circumstance." *Prof'l Transp., Inc. v. Ill. Workers' Comp. Comm'n, 2012 Ill. App. LEXIS 33 (Ill. App. Ct. 3d Dist. 2012)*. The court further detailed the claimant's burden when proving that he falls into the "odd

lot" category of permanent and total disability.

> 'Under *A.M. T. C*, if the claimant's disability is limited in nature so that he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is upon the claimant to establish the unavailability of employment to a person in his circumstances. However, once the employee has initially established that he falls in what [h]as been termed the "odd-lot" category (one who, though not altogether incapacitated for work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market [citation]), then the burden shifts to the employer to show that some kind of suitable work is regularly and continuously available to the claimant [citation].' [Citations]."

Id.

In this case, Petitioner has not proved that he falls into the odd lot category and thus has not met his initial burden of proof. Petitioner's treating physicians gave him permanent restrictions and allowed him to return to work within those restrictions. On June 9, 2011, Dr. Gornet concluded Petitioner had reached maximum medical improvement and was able to work with permanent restrictions of no lifting greater than 10 pounds, to alternate between sitting and standing as needed, no repetitive bending or lifting, and no pushing or pulling. Dr. Gornet did not restrict Petitioner from working over 40 hours or week, more than eight hours a day or overhead work.

Yet on the same day Petitioner received permanent restrictions, he applied for social security disability benefits. Petitioner did not attempt to return to work and has never applied for any jobs. Petitioner did not seek the assistance of vocational rehabilitation services to help him find alternative work. Instead, Petitioner testified that he has never sought and did not want vocational rehabilitation services. He also stated he was unwilling to commit to participating in a vocational rehabilitation plan to become re-employed.

Petitioner's medical records do not establish that he is completely restricted from working. Respondent's Section 12 examiner, Dr. Lange, also placed Petitioner at maximum medical improvement on July 7, 2011, and gave him permanent work restrictions consistent with sedentary to light physical demand levels. Instead, Petitioner began receiving his social security disability benefits on September 3, 2011. He continues to receive them and has not found employment.

Furthermore, Petitioner's subsequent medical records document that his low back condition actually improved. Petitioner told Dr. Boutwell on January 6, 2012, that his discomfort was relatively well controlled. Dr. Boutwell noted that Petitioner was in no acute distress, his lumbar range of motion was less limited and his quality of movement appeared to have improved since the May 2011 visit. Dr. Boutwell only refilled one of Petitioner's prescriptions and told him to return in a year. Petitioner followed up with Dr. Gornet on January 9, 2012, who also

14IWCC0234

noted that Petitioner was functioning better than in June 2011, was off all narcotics and the x-rays showed good position of his devices. While Petitioner told Dr. Gornet for the first time that any prolonged activity increased his pain to the point where Petitioner only felt relief from lying in a fetal position, Dr. Gornet did not change his work restriction. Petitioner followed up with Dr. Gornet again on August 16, 2012. Dr. Gornet stated that Petitioner's condition was permanent and "clearly he has some limitations." Again, Petitioner's work restrictions remained unchanged. Dr. Gornet again noted that his radiographs looked excellent, his fusion was solid and Petitioner took non-narcotic medications to help with "some of his pain." Petitioner also saw Dr. Lange again at Respondent's request on June 26, 2012. Petitioner again claimed it was necessary for him to lie in a fetal position several times a day. However, Dr. Lange also did not recommend additional work restrictions for Petitioner. The medical records reflect that Petitioner's low back condition had improved. No objective findings supported Petitioner's subjective claim of needing to lie in the fetal position to relieve his pain. Moreover, no physician gave Petitioner restrictions or opined that he was permanently and totally disabled.

Instead, based on Petitioner's own testimony, he leads a rather active life style. Petitioner cares for his 12 year old son, drives him to and attends school and sport activities. He helps his son with homework. Petitioner cooks meals, cleans the house, vacuums, does laundry, grocery shops and drives for several errands. He attends church and family activities and visits friends. Petitioner admitted he has driven to Chicago and St. Louis to attend sporting and entertainment events. This does not support that Petitioner's life style is so restricted that he has to stay home and lie in bed to relieve his pain.

Additionally, Petitioner has not demonstrated that he is motivated to find alternate employment and thus demonstrate that a stable labor market for one with Petitioner's age, skills, education and experience does not exist. Respondent sent Petitioner to vocational rehabilitation counselors Blaine and Dolan on November 15 and 17, 2011, respectively. Petitioner told both Blaine and Dolan that he needed to lie down in the fetal position regularly throughout the day; this is the first time Petitioner claimed to be so sedentary. Petitioner also told the counselors that he was not capable of working, or participating in additional training or education for re-employment because of his back pain. These limitations are not supported by the medical records. However, Dr. Gornet never gave Petitioner work restrictions of lying down as needed. Petitioner admitted during his testimony that his only work restrictions were those issued by Dr. Gornet on June 9, 2011.

Blaine and Dolan concluded that Petitioner was a candidate for additional vocational services, including training for sedentary level work. Dolan also concluded that Petitioner had the aptitude to complete a vocational school or community college program for sedentary jobs. This is consistent with Petitioner's education, work history and skills. He is a high school graduate, attended two and a half years of college with a major in business, took a real estate license course and uses a computer at home. Petitioner has worked a number of different jobs requiring a variety of skills, including reading machinery and production line blueprints and manuals, medical bookkeeping, account bookkeeping, and other administrative type duties. Further, Petitioner admitted that learning new job skills was never a problem for him. Yet,

14IWCC0234

Petitioner never followed up with Blaine or Dolan to participate in vocational rehabilitation. Instead, Petitioner testified he never read their reports. Petitioner has demonstrated he is not motivated to return to work.

Petitioner has not shown that he is unable to find a position in the open labor market. Petitioner has not even attempted to return to work and has self imposed significant restrictions on his physical abilities, which are not supported by the medical records. Petitioner has not shown interest in participating in vocational rehabilitation and it is doubtful that he would put in full effort to attempt to secure employment. The evidence does not support that Petitioner is unable to find alternative employment. We find that Petitioner has not proved that he is permanently and totally disabled.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $607.29 per week for a period of 101-1/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $546.56 per week for a period of 225 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the permanent partial disability to the extent of 45% of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 3 1 2014
TJT: kg
o 1/28/14
51

Daniel R. Donohoo

Kevin W. Lamborn

DISSENT

Because I believe Petitioner demonstrated that he is permanently and totally disabled, I respectfully dissent from the decision of the majority to reverse the well-reasoned decision reached by Arbitrator Lee.

A person is totally disabled when he cannot perform any services except those for which no reasonably stable labor market exists. *Valley Mould & Iron Co. v. Industrial Comm'n,* 84 Ill. 2d 538, 546 (1981). The claimant need not be reduced to total physical incapacity but "must show that he is unable to perform services except those that are so limited in quantity, dependability, or quality that there is no reasonably stable market for them." *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 544 (2007).

Here, Petitioner successfully established he falls into the "odd-lot" category by demonstrating the unavailability of employment to a person in his circumstances. Petitioner's treating physicians provided Petitioner with significant permanent restrictions that effectively exclude Petitioner from obtaining gainful employment. Dr. Gornet placed Petitioner at maximum medical improvement on June 9, 2011, with permanent restrictions of no lifting greater than 10 pounds, no repetitive bending or lifting, and no pushing or pulling. The restrictions also required that Petitioner be given the ability to alternate between sitting and standing as needed. At Respondent's request, Petitioner was then examined by Dr. Lange on July 7, 2011, and Dr. Lange indicated that Petitioner would require permanent restrictions consistent with sedentary to light physical demand levels, and that Petitioner would require intermittent activity with respect to sitting, standing, and walking. After a Section 12 exam on June 26, 2012, Dr. Lange agreed with Dr. Gornet that Petitioner was at maximum medical improvement. Dr. Lange stated that Petitioner "will need medications on a permanent basis," and he added that Petitioner "probably is not employable."

Further, Respondent sent Petitioner to two vocational rehabilitation counselors, Mr. Dolan and Ms. Blaine, who both agreed Petitioner cannot perform the same job duties he had performed prior to the injury that gave rise to this action. The two experts agreed Petitioner is incapable of finding a sedentary position of employment given his training. Mr. Dolan opined that Petitioner would not be employable. Mr. Dolan noted that it would be very difficult for Petitioner to work an eight-hour day or to undergo any sort of retraining or education since he needed to lie down in the middle of the day. Even if retraining were possible, Mr. Dolan questioned whether an employer would hire Petitioner given his restrictions. Mr. Dolan stated that employers are going to see Petitioner as a potential liability in their workplace and not as an answer to their staffing needs.

Because Petitioner has satisfied his initial burden, Respondent must prove that Petitioner is employable in a stable labor market and that such a market exists. The record does not establish that Petitioner is employable in a stable labor market that exists despite Ms. Blaine's suggestions to the contrary. Ms. Blaine opined that Petitioner can find employment only in a sedentary position, and she concluded that Petitioner does not possess the skills necessary to find

14IWCC0234

such employment. Ms. Blaine suggested that retraining would allow Petitioner to find employment, but she failed to consider whether Petitioner's circumstances would allow him to participate in such training. Of particular significance here is that fact that Ms. Blaine did not have Dr. Lange's final report available to her at the time of her evaluation because that report was created several months after Ms. Blaine's evaluation. Thus, Ms. Blaine was unable to consider or rely upon Dr. Lange's most recent opinion about Petitioner's condition, its affect on Petitioner's restrictions and his ability to work or take part in retraining. This is important because Dr. Lange's final report concluded that Petitioner is not employable because of his significant physical limitations. Further, Respondent sent Petitioner to be evaluated by Mr. Dolan, who had Dr. Lange's report available to him, and he opined that retraining would be very difficult for Petitioner to undertake and that he is not employable. The opinions offered by Respondent's vocation rehabilitation counselors suggest that Petitioner will not be able to find alternative employment.

For the reasons stated above, I hold that Petitioner has met his burden of proving that he is permanently and totally disabled, and I hold that Respondent has failed to demonstrate Petitioner is employable in a stable labor market and that such a market exists. Therefore, the arbitrator's decision should stand.

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

BROOKINS, AARON
Employee/Petitioner

Case# **09WC031240**

AMERICAN STEEL
Employer/Respondent

14IWCC0234

On 4/10/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2424 SAUTER SULLIVAN & EVANS
CHRISTOPHER GELDMACHER
3415 HAMPTON AVE
ST LOUIS, MO 63139

0385 BONALDI CLINTON & DAVIS LTD
DAVID W CLINTON
2900 FRANK SCOTT PKWY W #988
BELLEVILLE, IL 62223

14IWCC0234

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [x] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [ ] None of the above

CORRECTED
ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

AARON BROOKINS
Employee/Petitioner

v.

AMERICAN STEEL
Employer/Respondent

Case # 09 WC 31240

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward N. Lee**, Arbitrator of the Commission, in the city of **Collinsville**, on **December 21, 2012**. By stipulation, the parties agree:

On the date of accident, **June 16, 2009**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **$40,992.21**, and the average weekly wage was **$910.94**.

At the time of injury, Petitioner was **37** years of age, ***married*** with **1** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **$110,085.25** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of **$110,085.25**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

14IWCC0234

ORDER

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of $ 607.29/week for 101 1/7 weeks, commencing 7/6/09 through 7/19/09 and 7/23/09 through 6/9/11, as provided in Section 8(b) of the Act.

Permanent Total Disability
Respondent shall pay Petitioner permanent and total disability benefits of $607.29 for life, commencing 6/10/11, as provided in Section 8(f) of the Act.

Respondent shall be entitled to a credit for all temporary total disability benefits and permanent and total disability benefits which have already been paid to Petitioner.

Commencing on the second July 15th after the entry of this award, the Petitioner may become eligible for cost of living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

4/8/13
Date

APR 10 2013

STATEMENT OF FACTS:

Petitioner started working for Respondent on December 6, 2007. On June 16, 2009, Petitioner was operating a grinder, attempting to grind approximately a quarter inch of steel off of a train bolster, when he felt a pop in his back.

Petitioner went to the plant's medical dispensary. The medical dispensary referred Petitioner to Midwest Occupational Medicine. Dr. George Dirkers of Midwest Occupational Medicine ordered an MRI of Petitioner. (PX. 8). After Petitioner received the MRI of his lumbar spine (PX. 9), Dr. Dirkers sent Petitioner back to work full duty.

Petitioner sought a second opinion from his primary care physician, Dr. Khaled Hassan. Dr. Hassan saw Petitioner on July 23, 2009, and noted low back pain and radiculopathy. (PX. 10). Dr. Hassan instructed Petitioner to be off of work. (PX. 10). Dr. Hassan referred Petitioner to Dr. Matthew Gornet, a back surgeon.

Dr. Gornet saw Petitioner on August 13, 2009. (PX. 6). Dr. Gornet reviewed the MRI films and diagnosed an annular tear at L5-S1 which was "consistent with (Petitioner's) low back, buttock, and leg pain. (PX. 6). Dr. Gornet ordered and Petitioner received epidural steroid injections. (PX. 6). Dr. Gornet instructed Petitioner to remain off of work. (PX. 6).

Dr. Gornet stated in his October 5, 2009, note that the injections and physical therapy had failed. On January 26, 2010, Petitioner underwent an anterior decompression of L5-S1 with a disc replacement. (PX. 15).

Petitioner testified that two weeks after having the disc replacement surgery, he "had a major problem." The disc replacement that had been placed in his spine had shifted. Dr. Gornet advised Petitioner that he would require a second surgery in which a fusion of the discs would be performed. (PX. 6). The fusion surgery was performed on June 2, 2010. (PX. 6).

After the second surgery, Petitioner was instructed to wear a bone stimulator to assist with the fusion. Further visits to Dr. Gornet on July 15, 2010, and September 1, 2010, included CT scans which showed that the fusion was failing to adequately fuse. (PX. 6).

Dr. Gornet referred Petitioner for pain management treatment. (PX. 6). Petitioner received pain management from Dr. Kaylea Boutwell which consisted of narcotic medications which were later weaned to non-narcotic medications, and injections. (PX. 19).

Dr. Gornet placed Petitioner at maximum medical improvement on June 9, 2011. (PX. 6). On June 9, 2011, Dr. Gornet provided Petitioner with permanent restrictions of no lifting greater than ten (10) pounds, no repetitive bending, no repetitive lifting, no pushing or pulling, and that Petitioner must be able to alternate between sitting and standing as needed. (PX. 6).

Respondent sent Petitioner to Dr. David Lange for a Section 12 exam on June 26, 2012. (PX. 1). Dr. Lange agreed with Dr. Gornet that Petitioner was at maximum medical improvement. (PX. 1). Dr. Lange stated that Petitioner "probably is not employable." (PX. 1). Dr. Lange stated in his report that Petitioner "will need medications on a permanent basis." (PX. 1). In a previous exam on July 7, 2011, Dr. Lange indicated that Petitioner would require permanent restrictions

consistent with sedentary to light physical demand levels, and that Petitioner would require intermittent activity with respect to sitting, standing, and walking. (PX. 2).

On November 17, 2011, Petitioner was seen by vocational rehabilitation specialist J. Stephen Dolan. Mr. Dolan found that according to both Dr. Gornet and Dr. Lange, Petitioner could only return to a position of employment "where he does very little physical work" and would require a job "where he can change position as he needs for pain control." (PX. 7). Mr. Dolan stated that very few jobs exist for workers who do not have training for sedentary work, and that potential employers are going to see Petitioner as a potential liability in the workplace, and not as an answer to their staffing needs. (PX. 7). Mr. Dolan opined in his report that based upon Petitioner's education, work experience, academic skills, work skills, and the restrictions placed on him by Dr. Gornet and Dr. Lange, Petitioner is not able to maintain employment in the open labor market. (PX. 7). Finally, Mr. Dolan found that Petitioner's restrictions would give him the same problems with any potential retraining as it would give him in a sedentary style employment. (PX. 7).

On November 15, 2011, Petitioner was seen by vocational rehabilitation specialist June Blaine at the request of Respondent. Ms. Blaine opined in a report dated December 30, 2011, that based upon Dr. Gornet's permanent restrictions, Petitioner needed to focus on jobs in the sedentary level of work. (RX. 11). Ms. Blaine opined that training could include clerical skills would enable Petitioner to work in support role for jobs with pain in the $8.50 to $10.00 per hour range. (RX. 11).

Ms. Blaine's report references Dr. Lange's July 7, 2011, report, by stating that Dr. Lange found that Petitioner "would also have intermittent activity with respect to sitting, standing and walking." (RX. 11). This appears to be citing to Dr. Lange's statement in his July 7, 2011, report in which he stated that Petitioner "would also need to have intermittent activity with respect to sitting, standing and walking." (PX. 2). Ms. Blaine's one and a half pages of findings do not reference Dr. Lange's statement about Petitioner having intermittent activity with respect to sitting, standing, and walking. (RX. 11).

Further, Ms. Blaine did not have available to her at the time of her evaluation, Dr. Lange's final report on Petitioner which was created after his final visit with Petitioner on June 26, 2012. (PX. 1). As such, Ms. Blaine was unable to consider or rely upon Dr. Lange's most recent opinion about Petitioner's condition and its affect on Petitioner's restrictions and his ability to perform work. In this June 26, 2012, report, Dr. Lange stated that Petitioner is "probably not employable." (PX. 1).

Petitioner testified that since his appointment with June Blaine on November 15, 2011, no one at the employer has ever approached him about any vocational assistance or any kind of retraining. Further Petitioner testified that when he saw Dr. Lange on June 26, 2012, Dr. Lange told Petitioner that he was probably not employable. Petitioner testified that the first time he heard anything from Respondent about performing any vocational retraining was during cross examination at the hearing.

Petitioner testified that he did not believe that he could perform retraining. Specifically, Petitioner testified that his body could not get through retraining.

CONCLUSIONS:

The Arbitrator finds that Petitioner suffered a disc injury at L5-S1 on June 16, 2009, while in his employment with Respondent. Petitioner's condition caused radiculopathy and necessitated a disc replacement surgery which occurred on January 26, 2010, and later a fusion surgery which occurred on June 2, 2010. Petitioner's condition has resulted in the permanent restrictions placed upon Petitioner by his treating physician, Dr. Gornet, and by the Section 12 examiner, Dr. Lange. The Arbitrator finds the combination of Dr. Gornet and Dr. Lange's opinions persuasive, particularly Dr. Lange's comment in his June 26, 2012, report in which he admitted that Petitioner was "probably not employable."

Given Dr. Lange's June 26, 2012 statement, and Dr. Gornet and Dr. Lange's opinions regarding Petitioner's permanent disabilities, June Blaine's opinion that additional training could render Petitioner employable is found not to be credible. Ms. Blaine's opinion was rendered prior to Dr. Lange's final comment on Petitioner's condition on June 26, 2012. Further, Mr. Dolan's opinion that Petitioner's physical condition would not allow retraining is found to be credible. Mr. Dolan's finding that Petitioner is not able to maintain employment in the open labor market is also found to be credible.

Petitioner has met his burden of proving that he is permanently and totally disabled. Petitioner is found to be permanently and totally disabled. It is further found that Petitioner requires ongoing medical attention for his condition which includes, but may not be limited to, ongoing provision of medications, ongoing visits with Dr. Gornet, and ongoing visits with Dr. Boutwell.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alisa Adair,

Petitioner,

vs.

NO: 11 WC 39250

14IWCC0235

Madison County Circuit Clerk's Office,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, permanent partial disability, medical expenses, notice, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 24, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0235

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 3 1 2014
TJT:yl
o 3/25/14
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ADAIR, ALISA
Employee/Petitioner

Case# **11WC039250**

MADISON COUNTY CIRCUIT CLERK'S OFFICE
Employer/Respondent

14IWCC0235

On 7/24/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1580 BECKER SCHROADER & CHAPMAN PC
TODD J SCHROADER
3673 HWY 111 PO BOX 488
GRANITE CITY, IL 62040

1001 SCHREMPF BLAINE KELLY & DARR
MATTHEW W KELLY
307 HENRY ST #415 PO BOX 725
ALTON, IL 62002

14IWCC0235

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Alisa Adair
Employee/Petitioner

v.

Madison County Circuit Clerk's Office
Employer/Respondent

Case # **11** WC **039250**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Collinsville**, on **May 29, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

14IWCC0235

FINDINGS

On **01/04/2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is in part*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**40,600.56**; the average weekly wage was $**780.78**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **2** children under 18.

Petitioner has received all reasonable and necessary medical services.

Respondent shall be given a credit of $ for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

Respondent would be entitled to a credit of up to $**5,521.59** under Section 8(j) of the Act.

ORDER

See attached decision.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

July 22, 2013
Date

JUL 24 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALISA ADAIR,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 11 WC 39250
	)	
MADISON COUNTY CIRCUIT CLERK'S OFFICE,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner is a right-hand dominant woman, 41 years old as of the asserted date of loss, who works as a deputy clerk in the Madison County Circuit Clerk's Office with approximately 22 ½ years in that office on the date of trial. She testified she was assigned as a clerk for a judge in the family law division, and her job tasks included various clerical duties, including retrieving files, typing orders, updating computerized case information, reviewing mail and putting correspondence into the proper file, answering phones and dealing with walk-in business. She works Monday to Friday, 8:30-4:30, with one hour for lunch and two 15-minute breaks.

The petitioner testified she had gradual complaints of pain in her hands at night with her right pinky finger locking up occasionally. On January 4, 2011, she saw Dr. Timothy Penn in connection with those complaints. See PX1. She advised him that her symptoms began in approximately November 2010. He noted a negative Tinel's sign and he noted the only significant finding was of some triggering at the right little finger. He injected the A1 tendon and recommended wrist splints for possible early carpal tunnel syndrome. He told her to follow up in a month.

The petitioner testified that she told her supervisor she was going to see a physician in connection with her hand complaints. However, it does not appear that the petitioner reported a work injury at that time. No paperwork was completed, the petitioner used her personal insurance, and Gina Hargrove, the petitioner's supervisor, testified that the first time she heard that the claimant was relating her hand symptoms to work was October 2011, which is when she filled out the report of injury (RX2). Ms. Hargrove noted that the petitioner mentioned having received treatment during this period, as the petitioner had mentioned having the EMG, but did not relate it work.

The petitioner did not return to Dr. Penn. By February 21, 2011 she had retained counsel, though no Application was filed at that time; her attorney had arranged for her to

see Dr. Michael Beatty that day, but she could not attend due to car trouble. PX2. She saw Dr. Beatty on April 11, 2011. At that time, she complained of nine to twelve months' history of pain of increasing severity. He noted a positive Tinel's sign on the right wrist and positive Phalen's bilaterally, and ordered EMG testing. PX2.

On May 26, 2011, the EMG/nerve conduction studies were performed. They were entirely normal. PX3.

On June 30, 2011, Dr. Beatty saw the petitioner in follow-up. Despite the negative diagnostic studies, he maintained his diagnosis and recommended bilateral carpal tunnel release surgery. PX2.

The petitioner was seen for a Section 12 evaluation by Dr. Gerald Lionelli on January 6, 2012. Dr. Lionelli discussed the petitioner's job duties and reviewed a formal job analysis. Dr. Lionelli found negative Tinel's on the right, positive on the left, and negative Phalen's bilaterally. He also noted the negative EMG testing. He concluded the petitioner had an "atypical" presentation of problems with her bilateral hands and concluded she did not have carpal tunnel syndrome, but did have evidence of stenosing tenosynovitis in her right little finger. After a detailed review of petitioner's complaints and her employment duties, as well as other potential contributory causes such as the petitioner's long history of smoking, Dr. Lionelli concluded the petitioner's employment duties had not caused or contributed to the petitioner's condition in her hands.

Dr. Beatty performed right carpal tunnel release and the release of the A1 pulley area of the right fifth finger on April 10, 2012. PX4. Postoperatively the sutures were removed on April 23 and she was noted to be coming in the next week for surgery. PX2. He thereafter performed a release of the left carpal tunnel on May 1, 2012. See PX 5. In a postoperative appointment on May 7, her right hand was "doing okay" and her left hand was noted to be healing. On May 14, the remaining sutures in the left hand were removed. PX2.

The claimant underwent postoperative occupational therapy in June 2012. PX6. The petitioner was released to full duty work as of July 2, 2012. Dr. Beatty found the petitioner was at MMI and had done well post-operatively as of July 23, 2012. PX2. The petitioner has continued to work in her pre-surgical capacity for the respondent.

Depositions of Dr. Beatty were conducted on January 19, 2012, and on November 14, 2012. Dr. Lionelli testified via evidence deposition on July 31, 2012. PX7-8, RX1.

OPINION AND ORDER

Accident and Causal Relationship

In cases relying on the repetitive trauma concept, the claimant generally relies on medical testimony to establish a causal connection between the claimant's work and the

claimed disability. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co. v. Industrial Commission*, 414 Ill. 326 (1953). When the question is one specifically within the purview of experts, expert medical testimony is mandatory to show that the claimant's work activities caused the condition of which the employee complains. See, e.g., *Nunn v. Industrial Commission*, 157 Ill.App.3d 470, 478 (4th Dist. 1987). The causation of carpal tunnel syndrome via repetitive trauma has been deemed to fall in the area of requiring such expert testimony. *Johnson v. Industrial Commission*, 89 Ill.2d 438 (1982).

While treating physicians are usually given a degree of deference, in this case the treating physician's opinions regarding carpal tunnel syndrome and the subsequent surgical recommendation are undermined by the physical examinations and diagnostic evidence. The Tinel's signs have been thoroughly inconsistent; Dr. Penn's was negative, Dr. Beatty's was only positive on the right side, and Dr. Lionelli's only on the left. The Phalen's tests were also inconsistent between Dr. Beatty and Dr. Lionelli. More importantly, the EMG testing was negative. Dr. Beatty's attempt to minimize the reliability of electrodiagnostic testing is not consistent with the usual and customary reliance of practitioners on such studies in similar cases.

In this case, Dr. Lionelli's opinion is deemed more persuasive relative to the carpal tunnel syndrome diagnosis and surgery, as it appears more coherent with the objective studies and clinical examination. As such, the Arbitrator finds a failure of proof establishing a work-related accidental injury due to repetitive trauma with such being causally connected to the petitioner's conditions in her bilateral wrists.

The physicians do agree, however, that the petitioner did suffer from A1 tendon tenosynovitis in the right fifth (pinky) finger. The physical evidence of this condition is much more coherent and less equivocal. On this issue, Dr. Beatty's causation opinion that her employment could have accelerated this particular condition is deemed credible, and the Arbitrator finds a causal relationship to have been established.

Notice

The Arbitrator finds sufficient oral notice relative to the pinky finger to have been provided on or about January 4, 2011, when the claimant advised that she was going to the doctor for evaluation of the finger.

Relative to the wrists, this issue is moot given the above findings.

Medical Services Provided

The respondent is directed to pay the medical bills (see PX9) related to the right small finger diagnosis and surgery pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for any and all amounts previously paid but shall hold the

petitioner harmless, pursuant to 8(j) of the Act, for any group health carrier reimbursement requests for such payments. These include Dr. Penn's date of service 1-4-2011; those aspects of the 4-10-12 surgery (Anderson Hospital and Millenium Anesthesia) related to the right small finger; and Dr. Beatty's treatment for the finger. While Dr. Lionelli's expenses are listed in PX9, for obvious reasons that is an error, as he was not a treating provider and the respondent is liable for those expenses.

The medical services provided with regard to the bilateral wrist surgery are denied, due to the lack of a causal relationship.

Temporary Total Disability

The right small finger surgery appears to have been partially responsible for the petitioner's recovery post-surgery until May 7, when Dr. Beatty's attention shifted to the opposite wrist. As such, the respondent shall pay the claimant $520.52 per week for the period of April 10, 2012, through May 7, 2012, inclusive, a period of 4 weeks.

Nature and Extent

The Arbitrator finds that the petitioner's work-related accident was causally related to the right small finger A1 pulley release to address the tendon synovitis. The petitioner has since returned to her regular and unrestricted job duties. The petitioner having reached maximum medical improvement, respondent shall pay the petitioner the sum of $468.68 per week for 4.4 weeks because the injury sustained caused the 20 percent loss of the right fifth finger.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Cynthia Draege,

Petitioner,

vs.

NO: 11 WC 33052

14IWCC0236

State of Illinois Department of Children and Family Services,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 17, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: MAR 3 1 2014
TJT:yl
o 3/25/14
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GRAEGE, CYNTHIA
Employee/Petitioner

Case# **11WC033052**

ST OF IL/DCFS
Employer/Respondent

14IWCC0236

On 7/17/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0499 DEPT OF CENTRAL MGMT SERVICES
MGR WORKMENS COMP RISK MGMT
801 S SEVENTH ST 6 MAIN
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL
FARRAH L HAGAN
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

JUL 17 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

14IWCC0236

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Cynthia Draege
Employee/Petitioner

v.

State of IL/DCFS
Employer/Respondent

Case # **11** WC **33052**

Consolidated cases: ___

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin** , on **5/16/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Section 5(b) lien credit**

FINDINGS

On **8/3/11**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$71,894.00**; the average weekly wage was **$1,382.52**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$all service connected time paid** for TTD, $- for TPD, $- for maintenance, and $- for other benefits, for a total credit of **$all service connected time paid**.

Respondent is entitled to a credit of $- under Section 8(j) of the Act.

ORDER

Respondent shall pay the medical expenses contained in Petitioner's group exhibit. Respondent shall have credit for any amounts previously paid. Respondent shall hold Petitioner harmless from any claim by any health care provider contained therein. If Petitioner's group health carrier requests reimbursement, Respondent shall indemnify and hold Petitioner harmless.

Respondent shall pay Petitioner permanent partial disability benefits of $695.78/week for 150 weeks, because the injuries sustained caused the 30% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall receive credit for any payments made or prospective payments to be made to Petitioner by Respondent, involving the accident of August 3, 2011, from any proceedings recovered by Petitioner in her 3rd party claim regarding the automobile accident of August 3, 2011, pursuant to §5(b) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

7/15/13
Date

JUL 17 2013

14IWCC0236

FINDINGS OF FACT

Petitioner is an advance investigator for Respondent specializing in child protection. When she receives a report of child abuse in her area, she drives to interview the alleged victims and alleged perpetrators and writes a report. This requires driving, which she does every day. The parties stipulated that on August 3, 2011 she was involved in a severe automobile accident in the course of her duties. The accident totaled her car. In the accident she injured her neck, chest, shoulder and upper torso.

At Arbitration, Petitioner testified that she was in an earlier automobile accident on November 8, 2009. She was rear ended and struck her head on the driver side window. Following the 2009 accident, Petitioner had good relief with epidural injections and was discharged to return to work. Immediately following the 2011 accident, she was taken by ambulance to Herrin Hospital. There she was seen with left shoulder pain and moderate left-sided chest pain. There she was noted to have bruising from her neck to the mid-line of her trunk. She was given chest x-rays, which were negative; left shoulder x-rays, which suggested a possible acromioclavicular joint separation; and a CAT scan of the chest, abdomen, and pelvis, which were also negative.

On August 8, 2011, she saw her primary care physician, Dr. William Huffstutler. He took the history of the accident and noted that Petitioner was taking narcotic pain medication. His history showed increasing migraines with neck soreness. He recommended time off since she was taking narcotic pain medication, and believed that she had a hairline fracture in her chest that was missed on x-rays or a severe contusion to the chest wall. He told Petitioner to continue her medication and to return if needed.

Petitioner then returned to Dr. David Raskas, who had treated her for the 2009 accident. He testified by way of deposition that the last time he saw Petitioner before the current accident was October 25, 2010 and at that time her pain score was zero. At that time, Dr. Raskas placed her at MMI. His note following the August 3, 2011 accident indicated that Petitioner was having neck pain, which radiated into her arms. He believed that she had similar symptoms in the past, but they were not active prior to the accident. He ordered a new MRI scan and compared it to the MRI taken from the 2009 accident and did not see significant changes. He believed that the accident aggravated Petitioner's pre-existing degenerative neck condition, and recommended conservative treatment. On October 19, 2011, despite having ongoing radiating pain, Dr. Raskas did not believe Petitioner was in need of any further treatment from him and she was released on a PRN basis.

Following that visit with Dr. Raskas, Petitioner continued to treat with her family physician, Dr. Huffstutler. He saw her on January 6, 2012 and noted that Petitioner was still having symptoms. Petitioner complained of cervical pain and Dr. Huffstutler advised Petitioner to use heat, rest, and range of motion exercises. Less than 5 weeks later, Petitioner returned to Dr. Raskas with a history of increasing neck pain, which had been going on for a couple of months. Her symptoms radiated into her left shoulder. Dr. Raskas noted limited range of motion in her neck with positive orthopedic signs. His impression was cervical radiculopathy, and he recommended conservative treatment. (Injections) These were done by Dr. Hurford, but did not offer any improvement. On May 25, 2012, Dr. Raskas noted that because Petitioner had failed injections, therapy, and medication, the surgical intervention of "last resort" would be performed. This was done on July 31, 2012 in the form of a C4-C6 anterior cervical fusion with anterior cervical plating and allograft. Following surgery, Petitioner missed minimal time from work and was placed at maximum medical improvement on March 11, 2013.

Dr. Raskas testified that the August 3, 2011 automobile accident was a contributing factor in the need for her symptoms being alleviated by surgery. Dr. Raskas believed that, while Petitioner's MRI films had not changed,

her symptoms and condition changed such so that it was no longer amenable to the conservative treatment of the injections performed by Dr. Hurford and the narcotic pain medication prescribed by Dr. Huffstutler. Prior to August 3, 2011, Petitioner never had a surgical recommendation either with Dr. Raskas or anyone else.

Despite the improvement following surgery, Petitioner testified her pain was not as constant. It flares up periodically depending on her activity and movement of her neck. She still has migraines, which are less frequent, and does neck exercises on a daily basis to avoid stiffness. She testified to occasional numbness and tingling, which was not as frequent. She sleeps with 2 medical pillows, which supports her neck at an angle, so she can sleep comfortably. She testified that she uses a laptop both at home and in her car and notices pain in the back of her neck without support. She takes narcotic pain medication depending on her level of symptoms, and has to take breaks during her travels over a five county area.

Respondent had Petitioner examined by Dr. David Robson on September 12, 2012. Dr. Robson opined that he did not believe Petitioner's cervical condition was caused by the accident on August 3, 2011. Dr. Robson explained that the MRIs of the cervical spine taken on May 25, 2010, and August 12, 2011, were virtually identical and showed a herniated disc at C5-6 with bulging at C4-5. He noted that the films were virtually the same on the same machine, and he did not see any difference pre and post the August 3, 2011, incident. Dr. Robson opined that if anything, Petitioner sustained a minor escalation of symptoms after the motor vehicle accident. Dr. Robson pointed to Dr. Raskas' August 10, 2011, note, which was about a week after the accident where Petitioner reported that her symptoms had been escalating pre-accident and she did not feel she had any change in her cervical spine symptoms due to the August 3, 2011, accident. Dr. Robson did not believe the C4-6 fusion was in any way related to the August 3, 2011, motor vehicle accident. Dr. Robson explained that Petitioner had been released by Dr. Raskas in October 2011 and placed at maximum medical improvement. When she did return to him in February 2012, she reported increased symptoms. On cross-examination, however, Dr. Robson conceded that on October 25, 2010, ten months before the accident, Petitioner was doing very well clinically. He noted that her pain score was Zero, had no neck symptoms, and was taking no medication. He admitted that Dr. Raskas had never recommended surgery before the August 3, 2011 accident and had no indication that Petitioner sought any treatment between October 25, 2010 and August 3, 2011. He acknowledged that Petitioner was not prescribed any narcotic pain medication and was not having any symptoms in her cervical spine.

CONCLUSIONS OF LAW

1. Petitioner has met her burden of proof regarding the issue of causation. In this case, the question is whether the Petitioner's condition of ill-being is a continuation of her symptoms from her October 25, 2010 motor vehicle accident or whether her condition is the result of her August 3, 2011 motor vehicle accident. A review of the medical records and the Petitioner's testimony indicate that the Petitioner's symptoms from her earlier accident in 2010 were either non-existent or had reached a plateau. Petitioner's complaints of neck pain were clearly increased following the August 3, 2011 accident to the point where surgery was required. Although Respondent's IME, Dr. Robson refuted the question of causation, he could not offer an explanation as to why Petitioner's symptoms increased following the August 3, 2011 incident. The Arbitrator finds the Petitioner's treating physician, Dr. Raskas more persuasive on this issue. Accordingly, the Arbitrator finds that the Petitioner's condition of ill being is causally connected to her August 3, 2011 accident.

2. Based on the findings above, Petitioner's medical treatment has been both reasonable and necessary. Petitioner attempted to manage her symptoms conservatively through medication and injections. However, as noted by Dr. Raskas, after the accident of August 3, 2011, Petitioner's symptoms no longer responded amicably to same, which resulted in Petitioner ultimately undergoing a C4-C6 anterior cervical fusion. Even Respondent's examiner, Dr. Robson, believed that Petitioner's surgery was entirely appropriate. Petitioner's condition improved following surgery. Respondent shall therefore pay the medical expenses contained in Petitioner's group exhibit. Respondent shall have credit for any amounts previously paid. Respondent shall hold Petitioner harmless from any claim by any health care provider contained therein. If Petitioner's group health carrier requests reimbursement, Respondent shall indemnify and hold Petitioner harmless for the same.

3. As a result of Petitioner's August 3, 2011 accident, Petitioner sustained injuries requiring her to undergo conservative care, followed by a C4-C6 anterior cervical fusion. Petitioner continues to have residual complaints following the surgery. Accordingly, the Arbitrator finds that as a result of the Petitioner's accident, she sustained a 30% loss of use of her person as a whole. Respondent is therefore ordered to pay the sum of $695.78/week for a further period of 150 weeks in accordance with Section 8(d)(2) of the Act.

4. Respondent shall receive credit for any payments made or prospective payments to be made to Petitioner by Respondent, involving the accident of August 3, 2011, from any proceedings recovered by Petitioner in her 3rd party claim regarding the automobile accident of August 3, 2011, pursuant to §5(b) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John Clore,

Petitioner,

vs.

NO: 11 WC 14236

14IWCC0237

Olin Corporation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under §19(b) by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, notice, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 4, 2012, is hereby affirmed and adopted.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 31 2014
TJT:yl
o 3/25/14
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

CLORE, JOHN
Employee/Petitioner

Case# **11WC014236**

OLIN CORPORATION
Employer/Respondent

14IWCC0237

On 6/4/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4620 ARMBRUSTER DRIPPS WINTERSCHEIDT
JOHN WINTERSCHEIDT
219 PIASA ST
ALTON, IL 62002

0299 KEEFE & DEPAULI PC
MICHAEL KEEFE
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
) SS. 14IWCC0237
COUNTY OF MADISON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

John Clore
Employee/Petitioner

v.

Olin Corporation
Employer/Respondent

Case # **11** WC **14236**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Collinsville**, on **3/26/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

14IWCC0237

FINDINGS

On the date of accident, **5/12/10**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was not* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned **$56,129.32**; the average weekly wage was **$1,079.41**.

On the date of accident, Petitioner was **45** years of age, *married* with **1** dependent children.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Petitioner failed to prove a work related accident or a causal relationship between work activities and his current condition of ill being. Petitioner failed to establish notice pursuant to the requirements under the Act. Petitioner's claim for benefits is denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

5/25/12
Date

ICArbDec19(b)

JUN 4 - 2012

The Arbitrator finds the following facts as to all disputed issues:

Petitioner testified at the time of arbitration he was 47 years of age. On the day of the alleged accident, he was employed with respondent, Olin Corporation. He was hired in 2003. Petitioner was terminated from his employment on May 12, 2010 and that is the last day that he worked with respondent. Since that date, petitioner has worked as a bartender and is employed roughly 14 hours per week. He testified that job does not require repetitive use of the right upper extremity. While employed with respondent, petitioner worked as a machinist. As a machinist, he would fabricate parts and repair machines. He used a variety of hand tools including running a lathe, running grinders, wrenches, sockets, come-alongs, screwdrivers, pliers, pipe-wrenches and ratchets. Petitioner frequently installed blowers on manufacturing machines. These blowers weigh up to 500 pounds. The blowers would be placed on a metal cart using a jack or hydraulic winch, rolled to the machine in need of repair and then installed. On average, he would install 10-15 blowers per day. Petitioner testified his work with respondent required the repetitive use of the right arm.

Petitioner testified that in May 2010 his right elbow began to tingle and his fingers would go numb. He would experience right elbow pain especially when lifting. He also experienced a pull or tug in his right shoulder while lifting. Petitioner testified the pain and discomfort he is currently experiencing in his right elbow is the same that he had experienced in his left elbow back in 2008, for which Petitioner filed a workers compensation claim. That workers' compensation claim also resulted in a diagnosis of epicondylitis. Specifically, petitioner testified the pre-surgical symptoms in his left elbow are similar to the pre-surgical symptoms he is currently experiencing in his right elbow.

Petitioner agreed at hearing he did not report a right elbow injury to his supervisors while he was still employed with respondent. He agreed he had reported his injury to supervisors concerning the 2008 injury and knew reporting injuries was important. His 2010 supervisors and the 2008 supervisors were the same group of individuals and he was doing the same type of work.

Petitioner sought medical treatment with Dr. Michael Beatty on March 14, 2011. Dr. Beatty testified he also treated petitioner for his earlier injuries, including left epicondylitis. Dr. Beatty performed a left epicondylectomy and agreed petitioner offered no complaints consistent with right epicondylitis at the time of his release in December 2008. (Px. 7, p. 19). Dr. Beatty's physical examination revealed chronic right medial epicondylitis. X-rays revealed no fracture or effusion, but a possible loose body in the elbow joint. Dr. Beatty recommended surgery.

Dr. Beatty referred petitioner to Dr. Bicalho for his right shoulder complaints. The physical examination is several months later, July 8, 2011. On physical examination, Dr. Bicalho noted the right shoulder exam was fairly unremarkable although noted decreased strength and decreased range of motion secondary to subjective pain complaints. Orthopedic testing of the shoulder was normal. The right elbow examination revealed pain-free movement with active and passive maneuvers. The right elbow strength was also normal. Dr. Bicalho diagnosed right shoulder impingement and tendonitis.

On July 13, 2011 an MRI of the right shoulder was performed. The radiologist noted mild to moderate supraspinatus and infraspinatus tendinopathy without definite evidence of a rotator cuff tear.

Respondent arranged for an independent medical exam with Dr. Mitchell Rotman. The examination was performed October 17, 2011. After review of the medical records, taking a history from petitioner and performing a physical examination, Dr. Rotman opined there was no right elbow injury and in particular no injury to the medial epicondyle. Dr. Rotman opined there was no causal relationship between the work activities and the work related injury; right elbow or right shoulder. Dr. Rotman does agree the work activities as described by petitioner while employed with respondent could cause or aggravate a medial epicondylitis.

Dr. Beatty's deposition was also taken. The doctor testified that at the time of his examination March 14, 2011 petitioner had right medial epicondylitis and he was recommending surgery. He also opined that there was a causal relationship between the work activities and that condition.

Petitioner testified that he still experiences pain in the right elbow especially with lifting. He states that if he bumps his elbow he gets a funny feeling. He also feels his right arm is not as strong. He wants the surgery recommended by Dr. Beatty. Petitioner also testified that he experiences the same tugging sensation in his right shoulder. He also experiences a click when he lifts his arm above his shoulder. He states carrying items will also reproduce pain and the tugging feeling.

Petitioner testified that he did not do any significant work activities from the time he was terminated in May 2010, and when he first sought medical treatment in March 2011. For the most part, he simply rode his motorcycle and fished. He did not do any golfing. He testified that he simply lived with right elbow pain and right shoulder pain from May 2010 through March 14, 2011 without reporting the pain or seeking medical treatment. This is a period of 10 months. This is despite the fact he had an identical condition on the left arm roughly one and one half to two years earlier. He testified he did not know the diagnosis for his right elbow at that time. Dr. Beatty's records indicate no referral from another physician, but that petitioner simply returned after a period of two years.

Petitioner testified that he has no insurance at this point and that only method of payment for the surgery is through workers' compensation. His wife does have insurance.

Based on the foregoing, the Arbitrator makes the following conclusions:

1. Petitioner failed to prove a work accident led to an injury. Petitioner was diagnosed with right medial epicondylitis by Dr. Beatty on March 14, 2011. Petitioner was examined by two subsequent orthopedic surgeons, Dr. Bicalho and Dr. Rotman, who did not diagnose any injury to the right elbow. Petitioner did not seek any treatment for his right elbow or right shoulder for a period of 10 months after he had last worked for respondent; May 2010 to March 14, 2011. Petitioner failed to prove an accidental injury to the right upper extremity as a result of a work accident.

2. Petitioner failed to provide proper notice of his alleged accident to Respondent. Petitioner asserts he did not realize his right arm pain was the result of a specific diagnosis and therefore he did not give timely notice to his former employer pursuant to Section 6(c). Petitioner testified he had the same condition on his left elbow in 2008 and that he experienced the same symptoms in the right elbow for a period of 10 months but did not realize it was potentially a work injury. The Arbitrator does not find this testimony persuasive.

3. Based on the above, all prospective medical, outstanding medical bills and lost time are denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LATISTE MARKS,

Petitioner,

vs.

NO: 10 WC 49552

14IWCC0238

PACE BUS – SOUTHWEST DIVISION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of Section 19(f) motion and being advised of the facts and law, affirms and adopts the Arbitrator's denial of Respondent's Motion.

On February 4, 2013, Respondent filed a Motion to Recall the Settlement Contract Pursuant to 19(f). The parties had previously entered into a settlement contract, which Arbitrator Carlson approved on January 7, 2013. Respondent received the approved Settlement Contract on January 17, 2013.

The Arbitrator denied Respondent's Motion on May 24, 2013. Respondent subsequently appealed the Arbitrator's denial to the Commission on May 28, 2013.

Upon consideration of said Motion, the Commission denies the Motion. The Arbitrator and Commission lacked jurisdiction to hear the Respondent's review as it was not filed within the time period allowed under Section 19(f). Furthermore, the Commission's authority under Section 19(f) is limited and the correction sought by Respondent is neither clerical nor computational in nature.

14IWCC0238

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's denial of Respondent's Motion to Recall Decision of Arbitrator filed February 4, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $12,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 31 2014
TJT: kg
O: 2/10/14
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Dodd,

Petitioner,

vs.

NO: 07 WC 37731

14IWCC0239

Menards/Mary M. Corp/Ricmar Corp/Ricmar Corp/Rick Pulciani, indv/ Mary M Pulciani, Nicolette Pulciani indv, Alex Giannoulias, Treas of the St of IL & Ex Officio of the Workers' Benefit Fund,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, benefit rates, employment relationship, causation, medical expenses, notice, temporary total disability, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 25, 2013, is hereby affirmed and adopted.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 3 1 2014
TJT:yl
o 3/17/14
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DODD, MICHAEL
Employee/Petitioner

Case# **07WC037731**

MENARDS/MARY M CORP/RICMAR CORP/RIC-MAR CORP/RICK PULCIANI, INDV/MARY M PULCIANI, NICOLETTE PULCIANI INDV, ALEX GIANNOULIAS, TREAS OF THE ST OF IL & EX OFFICIO OF THE INJURED WORKERS' BENEFIT FUND
Employer/Respondent

14IWCC0239

On 2/25/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4703 LAW OFFICES OF SCOTT B SHAPIRO
218 N JEFFERSON ST
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CARL S SALVATO
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1296 CHILTON YAMBERT & PORTER LLP
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NICOLE McNAIR
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

14IWCC0239

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MICHAEL DODD
Employee/Petitioner

Case # 07 WC 37731

v.

MENARDS/MARY M. CORP./RICMAR CORP/
RIC-MAR CORPORATION/RICK PULCIANI, INDIVIDUALLY/
MARY M. PULCIANI, NICOLETTE PULCIANI, INDIVIDUALLY,
ALEXI GIANNOULIAS, TREASURER OF THE STATE OF ILLINOIS
AND EX OFFICIO OF THE ILLINOIS INJURED WORKERS' BENEFIT FUND,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Milton Black**, Arbitrator of the Commission, in the city of **Chicago**, on **August 17, 2011; August 29, 2011; September 26, 2011; March 28, 2012; June 20, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [x] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [x] Was there an employee-employer relationship?
C. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [x] What was the date of the accident?
E. [x] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [x] What were Petitioner's earnings?
H. [x] What was Petitioner's age at the time of the accident?
I. [x] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] What temporary benefits are in dispute?
   [ ] TPD [x] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

14IWCC0239

FINDINGS AND CONCLUSIONS

This matter was heard on numerous trial dates. The facts are well known to the parties and will be recited only to the extent necessary. Petitioner alleges that he was injured while working for a borrowing employer owned by Respondent, Rick Pulciani. Pulciani and all of his related businesses are uninsured. The alleged lending employer is Menard's. The State Treasurer represents the Injured Workers Benefit Fund. All issues are in dispute.

One of the highly disputed issues is whether or not an accident ever occurred. Petitioner alleged that he sustained an accident on August 11, 2007, which was witnessed by two Menard's employees, "Dave" and "Warren". Petitioner was impeached by a felony conviction of six counts of forgery. Petitioner did not call "Dave" or "Warren" as witnesses. Pulciani alleged that he had terminated Petitioner, Petitioner had left for Michigan, and then Petitioner had returned claiming an untruthful accident. Pulciani testified to a self serving "final check".

Petitioner has the burden of proof, but he was impeached. He did not establish a *prima facie* case with his testimony alone. In a case like this, where credibility is critical, corroboration of a "witnessed" accident would have been extremely helpful. However, no such corroboration was presented.

Based upon the foregoing, the Arbitrator finds that Petitioner has not carried his burden of proof , by a preponderance of the evidence, that an accident occurred on August 17, 2011, as alleged.

The remaining issues are moot.

ORDER

No benefits are awarded, because Petitioner has not carried his burden of proof that an accident occurred on August 17, 2011, as alleged.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

February 22, 2013
Date

FEB 25 2013

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Russell Eberhardt,

Petitioner,

vs. NO: 13WC 00089

Advantage Industrial Systems,

14IWCC0240

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of temporary total disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 9, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $8,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 3 1 2014

Charles J. DeVriendt

Daniel R. Donohoo

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RWW/jrc
046

DISSENT

Petitioner injured his left shoulder in a work-related accident. He was released to one-handed work. While awaiting surgery he was assigned by Jim Griffith the duty of sweeping floors with a push broom. Petitioner testified that he could not maneuver the broom with one hand and that his arm hurt after he completed his day of sweeping. He also testified he informed Mr. Griffith that the sweeping hurt his arm and that he would accept work that was truly one-handed.

James Griffith, Vice President of Respondent, testified he assigned Petitioner to one-armed sweeping as light duty work. He observed Petitioner performing that light duty work two or three times a day. He never saw him use his left hand or have any difficulty performing that assignment. Petitioner never complained to the witness that the activity was hurting his shoulder. If Petitioner had complained they "could have him do a lesser job like filing or some office clerk work." Petitioner had not returned to work since February 15, 2013 and he did not tell the witness why he had not.

Respondent submitted into evidence surveillance video of Petitioner's activities. The video shows Petitioner performing various activities, some of which involve the use of his left hand. The most telling piece of the video shows several minutes of Petitioner shoveling snow with what appears to be a plastic shovel. It appears that he is pushing the snow with his right hand but at times uses his left hand to help guide the shovel.

In my opinion, Petitioner was not credible in his testimony that he was unable to adequately maneuver the broom with one hand, that he complained to Respondent about the light duty assignment, and offered to work as long as the light duty work was indeed one-handed. His testimony was completed rebutted by the testimony of Mr. Griffith. He testified credibly that he observed Petitioner use the push broom with one hand, that Petitioner never complained to him about the activity, and that other light duty work could have been assigned if Petitioner actually did complain about the particular assignment. In addition, the activities Petitioner was seen performing on the surveillance video, particularly the shoveling of snow, would be at least as strenuous a use of the left hand as using a push broom. Therefore, I would find that Petitioner refused a light duty assignment that he could have performed without further injury or pain.

Therefore, I do not believe Petitioner should be eligible for temporary total disability benefits for the subject period. I would have reversed the Arbitrator and denied those benefits. Accordingly, I respectfully dissent.

Ruth W. White

14IWCC0240

EBERHARDT, RUSSELL
Employee/Petitioner

Case# 13WC000089

ADVANTAGE INDUSTRIAL SYSTEMS
Employer/Respondent

On 7/9/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

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CHICAGO, IL 60606

14IWCC0240

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Russell Eberhardt
Employee/Petitioner

v.

Advantage Industrial Systems
Employer/Respondent

Case # 13 WC 89

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **April 5, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [ ] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [ ] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [ ] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [ ] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

14IWCC0240

On the date of accident, **12/21/2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$86,361.60**; the average weekly wage was **$1660.80**.

On the date of accident, Petitioner was **54** years of age, *married* with **0** dependent children.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$.00** for TTD, **$.00** for TPD, **$.00** for maintenance, and **$.00** for other benefits, for a total credit of **$.00**.

Respondent is entitled to a credit of **$.00** under Section 8(j) of the Act.

ORDER

- The Respondent shall pay the petitioner temporary total disability benefits of $ **1107.20**/week for **7-1/7th** weeks, from **2/15/2013** through **4/5/2013**, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner, the disabling condition is temporary and has not yet reached a permanent condition, pursuant to Section 19(b) of the Act.
- The respondent shall pay the further sum of $ **N/A** for necessary medical services, as provided in Section 8(a) of the Act.
- In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for a permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Arbitrator Greg Dollison

7/8/13
Date

ICArbDec19(b)

JUL 9 – 2013

FINDING OF FACTS:

On December 21, 2012, Petitioner was 54 years of age and employed by Advantage Industrial Systems. On said date Petitioner injured his left shoulder when he fell into hole in the floor. The accident is undisputed, and Petitioner continues to treat for injuries sustained. The sole issue in dispute is Petitioner's entitlement to TTD benefits from February 15, 2013 through the date of hearing, as well as prospective TTD through the date of surgery.

On the date of the accident, Petitioner presented to the Occupational Medicine Department at Ridge Road Immediate Care Center, part of Morris Hospital. Tenderness was noted over the greater tuberosity and x-rays noted mild central sclerosis in the shaft of the left humerus, which was indicative of a small enchondroma. Petitioner was diagnosed with a left shoulder strain and bone contusion. Petitioner was provided with a sling and advised to ice the area. Petitioner was prescribed physical therapy and placed on light duty work until he met with an orthopedic physician.

On December 28, 2012, Petitioner returned to Ridge Road Immediate Care. The records noted a limited range of motion in the shoulder. Petitioner reported his pain level at 8-10 out of 10 and described the pain as aching. Petitioner was referred to Hinsdale Orthopaedics for further evaluation as well as physical therapy.

Petitioner began a course of physical therapy at ATI in December of 2012.

On January 9, 2013, Petitioner presented to Dr. Leah Urbanosky at Hinsdale Orthopaedics in Joliet. Petitioner provided a consistent history of accident of injuring his left shoulder after falling at work. Petitioner reported that he had been in physical therapy for two weeks without improvement. Examination of Petitioner's cervical spine was normal. The left shoulder revealed subacromial tenderness, bicep tenderness and positive testing for Hawkins impingement. Dr. Urbanosky reviewed Petitioner's x-rays that were taken at the Immediate Care Center. The x-rays show mild marginal spur at the glenhumeral joint, subchondral cystic change at the prominent greater tuberosity, type 1 acromion, mild inferior AC spurring and subchondral cystic changes at AC joint. Petitioner was diagnosed with a left shoulder sprain. An MRI was ordered and physical therapy was suspended. Petitioner was released to right handed work only.

On January 23, 2013, Petitioner returned to Dr. Urbanosky. At that time, it was noted that the prescribed MRI had been denied by insurance. Dr. Urbanosky noted that Petitioner was in a lot of pain and was unable to lift his arm to the side. Petitioner was diagnosed with left shoulder syndrome impingement due to contusion injury at work on 12/21/2012. Dr. Urbanosky continued to recommend an MRI. Petitioner was placed on right arm work only.

Petitioner underwent the MRI on January 29, 2013. The MRI revealed a full thickness tear of the supraspinatus tendon, infraspinatus tendinosis, longitudinal interstitial split tear of the subscapularis tendon, and medial dislocation of the long head bicep tendon.

On February 12, 2013, Petitioner presented to Dr. Prasant Atluri for an IME per the request of the employer. Dr. Atluri opined that Petitioner's condition was work related and that Petitioner had suffered a full thickness tear to the rotator cuff at the distal supraspinatus and a tear to the anterior labram. Dr. Atluri opined that Petitioner should undergo a left shoulder arthroscopy with rotator cuff repair and possible labral tear repair. Dr. Alturi placed Petitioner on light duty work consisting of minimal overhead lifting, avoidance of repetitive

reaching and a 2 pound lifting restriction. The employer has offered one-handed work to Petitioner and authorized the proposed surgery.

Petitioner presented to Dr. Urbanosky on February 15, 2013 to review the MRI results. Dr. Urbanosky diagnosed Petitioner with arthritis of the acromioclavicular, bicep tendinitis, and rotator cuff tear. Dr. Urbanosky continued to recommend surgery via left shoulder arthroscopy with bicep tenodesis, spur excision or lesser tuberosity, subacromial decompression and rotator cuff repair. Petitioner was taken off work until after surgery was completed. It was noted that Petitioner's next appointment should be surgery.

Surgery was scheduled for April 18, 2013.

The employer's Vice President Jim Griffith testified that "one handed work" consisting of using a push broom to sweep floors was provided to Petitioner. Mr. Griffith testified that from December 22, 2012 until February 14, 2013 he had the opportunity to observe Petitioner perform light duty, one handed, sweeping. Mr. Griffith testified that he would observe Petitioner a few times per day and during those times, Petitioner performed his activities with one hand. He provided that at no time did Petitioner appear to be in any distress or exhibit any difficulty performing his tasks. Mr Griffith added that Petitioner never confronted him to complain that the activities he was being asked to perform were aggravating his pain. On cross examination, Mr. Griffith testified that he considered using a push broom one-handed work and that he had never seen a person use a push broom using 2 hands. Mr. Griffith further testified that the position of sweeping the floor was a "make work" position created temporarily for the purpose of providing light duty to the claimant.

Respondent offered into evidence a video of surveillance activities completed on February 21, 2013 through February 24, 2013. (Resp. Ex. 3) Petitioner is depicted driving an automobile. The video also shows Petitioner shoveling snow with use of his right hand. Finally, the video shows Petitioner performing household chores including rolling large tote garbage cans with one in each hand and picking up dog waste by carrying a large plastic bucket in his left hand and scoop in his right.

Petitioner acknowledged that Respondent provided light duty work between December 21, 2012 and February 15, 2013. Petitioner provided that he was "basically sweeping" during that period and that his arm hurt most of the time. Petitioner testified that he "used [his] left arm a little bit," as he could not sweep using his right arm exclusively. Petitioner provided that he took pain medications on daily basis after leaving work.

With respect to issue (L), What TTD benefits are due, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner is entitled to temporary total disability for the period from February 15, 2013 through the date of hearing, or April 5, 2013. Petitioner presented to Dr. Urbanosky on February 15, 2013 to review the MRI results. Petitioner reported that he continued with constant pain in his left shoulder, that he was still working and that his pain wakes him at night. Dr. Urbanosky continued to recommend surgery via left shoulder arthroscopy with bicep tenodesis, spur excision or lesser tuberosity, subacromial decompression and rotator cuff repair. Petitioner was taken off work until after surgery was completed. Just prior to his visit with Dr. Urbanoski, Petitioner presented to Dr. Prasant Atluri for an IME per the request of the employer. Dr. Atluri opined that Petitioner's condition was work related and that Petitioner had suffered a full thickness tear to the rotator cuff at the distal supraspinatus and a tear to the anterior labram. Dr. Atluri opined that Petitioner should undergo a left shoulder arthroscopy with rotator cuff repair and possible labral tear repair. Dr. Alturi placed Petitioner on light duty work consisting of minimal overhead lifting, avoidance of repetitive reaching and a 2 pound lifting restriction.

It is undisputed that Respondent has offered one-handed work to Petitioner and authorized the proposed surgery. It is also undisputed that video surveillance shows Petitioner can function to some degree using only his right arm. However, what cannot be appreciated by the surveillance is whether Petitioner can sweep one-

armed continuously for an eight-hour period. Also, the Arbitrator is not convinced that one can perform sweeping functions with a push broom using solely his right arm. The Arbitrator finds that being required to sweep using a push broom one armed only is not appropriate work within the restrictions imposed. Petitioner made a good-faith effort to return to work but was not given appropriate one-handed work by the employer.

Finally, the Arbitrator denies Petitioner's request for prospective TTD as the Arbitrator has no authority to award same.